

**DEPARTMENT OF STATE REVENUE**  
**SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 04-0227**  
**Sales/Use Tax**  
**For the Year 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Sales and Use Tax-Vehicles**

**Authority:** Ind. Code § 6-2.5-2-1; Ind. Code § 6-2.5-3-6; Ind. Code § 6-2.5-3-7; Ind. Code § 6-2.5-4-1; Ind. Code § 6-2.5-5-15.

Taxpayer protests the Department's assessment of sales tax with respect to the sale of trailers by Taxpayer, which Taxpayer claims were titled outside Indiana.

**II. Sales and Use Tax-Services**

**Authority:** Ind. Code § 6-8.1-5-4.

Taxpayer protests the imposition of sales tax with respect to charges that Taxpayer maintains were for services.

**III. Sales and Use Tax-Imposition**

**Authority:** Ind. Code § 6-2.5-3-2; Ind. Code § 6-2.5-3-5.

Taxpayer protests the imposition of use tax with respect to items that were purchased outside Indiana or constituted overhead expenses.

**STATEMENT OF FACTS**

Taxpayer is a corporation engaged in the sale of cargo trailers. Taxpayer purchases the trailers from another company, and then in turn sells them to purchasers, both in and out of Indiana according to Taxpayer.

During late 2002, Taxpayer's office was burglarized. After the burglary, Taxpayer reported a number of items stolen during the burglary. Later that same year, Taxpayer was audited by the Department. In the early part of 2003, after the Department notified Taxpayer of the audit, Taxpayer amended the original police report to include many other items, including Taxpayer's business records.

During the audit, the Department noted a difference between Taxpayer's sales reported for income tax purposes and sales reported for sales tax purposes. Taxpayer has protested this assessment, arguing that the sales were shipped to out-of-state purchasers or that the sales represented fees received for services performed by Taxpayer. Taxpayer has further protested the imposition of use tax with respect to several items that Taxpayer maintains were purchased outside Indiana or represented overhead expenses.

**I.     Sales and Use Tax-Vehicles**

**DISCUSSION**

Taxpayer argues that the sales in controversy were to out of state purchasers, and therefore exempt from sales tax. Taxpayer maintains, however, that the records were stolen in a burglary in late 2002. Taxpayer provided a list of sales indicating the various destinations of the trailers in controversy.

Under Ind. Code § 6-2.5-4-1, the sale of tangible personal property in the regular course of a person's regularly conducted trade or business is subject to sales tax. The sale of trailers constituted Taxpayer's regularly conducted trade or business, and accordingly Taxpayer had a responsibility to collect sales and use tax with respect to the sale of trailers. Ind. Code § 6-2.5-2-1(b); Ind. Code § 6-2.5-3-6(b).

Further, under Ind. Code § 6-2.5-3-7, property purchased in Indiana is presumed to be purchased for use in Indiana unless the seller has either been provided an exemption certificate by the purchaser or the seller or purchaser can otherwise establish that the property purchased was not used in Indiana, or was used for an exempt purpose.

However, Ind. Code § 6-2.5-5-15 stated that, for the years in question, trailers were exempt from sales tax if the purchaser immediately transports the trailer outside Indiana, titles or registers the vehicle in another state and does not title or register the trailer in Indiana.

Taxpayer has two avenues for establishing that Taxpayer is not liable for the tax in question. The first is to demonstrate that Taxpayer received an exemption certificate from the purchaser at the time of the purchase. Ind. Code § 6-2.5-3-7(b). Taxpayer has not done this.

In the alternative, Taxpayer can establish that the property was transported for use outside Indiana. To do this, Taxpayer would need to establish that the property was titled outside Indiana. Under the laws of Indiana and many other states, trailers are required to be registered with a relevant state agency. Taxpayer has provided sufficient documentation to conclude that the sales that Taxpayer indicated were shipped out-of-state were in fact shipped out-of-state.

**FINDING**

Taxpayer's protest is sustained.

**II.    Sales and Use Tax-Services**

### **DISCUSSION**

Taxpayer further argues that a portion of the sales in controversy actually represented service fees rather than the sale of tangible personal property, but lost his records in the 2002 burglary. While Taxpayer does make a correct statement of law if the charges in question were separately stated on the taxpayer's records, the issue becomes Taxpayer's records. Under Ind. Code § 6-8.1-5-4, a taxpayer is required to maintain books and records necessary to permit Department review of a taxpayer's liability by reference to those books and records. Otherwise, the taxpayer becomes subject to liability best on the best information available to the Department. Without the records to substantiate this claim, the best information available in this case is Taxpayer's gross sales per his federal income tax return. Accordingly, Taxpayer's protest is denied.

### **FINDING**

Taxpayer's protest is denied.

### **III. Sales and Use Tax-Imposition**

### **DISCUSSION**

Taxpayer protests the imposition of use tax with respect to several items. In particular, Taxpayer argues that the items constituted overhead expenses or were purchased outside of Indiana (both representations were contained in Taxpayer's protest), and accordingly is not subject to use tax on these items.

Indiana, like other states with sales taxes, imposes a use tax to complement its sales tax. In Indiana, a taxpayer is generally responsible for use tax with respect to all tangible personal property purchased in retail transactions, along with automobiles, watercraft and aircraft regardless of whether those items are purchased at retail, if the property in question is used in Indiana. Ind. Code § 6-2.5-3-2. If a taxpayer has paid sales or use tax to another state, the taxpayer is eligible for a credit against the use tax. Ind. Code § 6-2.5-3-5.

Several items are in question here. Taxpayer has not provided sufficient documentation, and accordingly is denied.

### **FINDING**

Taxpayer's protest is denied.